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Supreme Court, U.S.
FILED
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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WALTER G. PIETSCH

PETITIONER,

v.

GOVERNMENT OF THE UNITED STATES:
RONALD REAGAN, PRESIDENT;
William J. Casey, Director, CIA;
George Bush, President of the
Senate, et al.

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITIONERS' BRIEF

Walter G. Pietsch,
Pro Se
100 South Ocean Ave.
Apt. 4D
Freeport, N.Y. 11520
(516) 868-9523

EDITOR'S NOTE

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of the United States will unconstitutionally collude with the Executive branch of the United States government in its illegal war to overthrow the government of Nicaragua by denying this Petition for Writ of Certiorari and thereby aiding and abetting the continuation of that illegal war?

2. Whether the determination of a few hundred plaintiffs in a class action lawsuit not to be made accessories to murder against their will in an illegal war shall suffice to establish standing? - and/or -

3. Whether the fact that several of the plaintiffs have been to Nicaragua and plan to return there while others have members of their immediate family living there, in both cases putting them at risk of loss of life and limb as a direct result of the illegal war being waged there shall afford them standing? - and or -

QUESTIONS PRESENTED FOR REVIEW (continued)

4. Whether the plaintiff of record, Walter G. Pietsch, appearing pro se, shall have standing due to his demonstrated lifelong commitment to the sanctity of human life as well as the irreparable harm he has already suffered in seeking to stop the Vietnam War - being jailed for no reason when he also had no prior criminal record and suffering severe attacks of hyperventiliation culminating in hospitalization in an intensive care unit for a suspected heart attack, both forms of damage caused directly by his efforts in the courts to stop that illegal war and by the war itself - shall provide him standing in the instant case since damage of a similar nature or worse is likely to occur should the illegal war continue?

- and/or -

5. Whether citizens and taxpayers shall have standing to stop the misappropriation and misapplication of funds by the Executive branch to finance its illegal war against Nicaragua

QUESTIONS PRESENTED FOR REVIEW (continued)

5. (cont'd) since the expenditure of such funds for such purpose were either not approved or were specifically barred by Congress?

6. Whether petitioners as taxpayers shall have standing to challenge the lower courts' improper ruling, demonstrating reversible error, since said courts unconstitutionally state that Congress' power to tax and spend is not limited by its power to declare war, when in fact the war power was specifically intended by our founding fathers as a limitation on the taxing and spending power?

7. Whether petitioners are entitled to standing because the lower courts committed reversible error by knowingly, willfully, and maliciously excluding from the record plaintiffs' numerous bases for standing cited by them and falsely alleging that plaintiffs' only basis for standing asserted was "as a citizen and as a taxpayer?"

8. Whether citizens of the United States shall have standing on <u>any</u> basis to stop illegal wars, and, if so, <u>what basis</u>?

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Note: All of the authorities cited are referred to on page 8 of the text.

16. Neutrality Act, 18 USCS ss 960, and also ss 956 and 959.

17. President Reagan's Executive Order of December 4, 1981 Governing the Intelligence Agencies and Other Laws Prohibiting Assassinations and Kidnappings.

18. Principles of the Nuremberg Charter.

19. Statute of the Inter-American Commission on Human Rights, Art. I.

20. Statute of the International Court of Justice, Article 36, and including Acceptance of Compulsory Jurisdiction, passed by the U.S. Senate in 1946 together with the accompanying Committee Report.

21. Transactions in Firearms, Sec. 922 (a).

22. U.N. Charter, Chapter I, Art. 1, 2, 3 and 4; Chapter VI, Art. 33, ss 1: Chapter XVI, Art. 103.

23. Universal Declaration of Human Rights.

24. U.S. Constitution, Art. I, Sect. 8 and 9; Art. II, Sect. 1, 2, 3 and 4; Art. VI, and Amendments V, IX and X.

25. War Powers Resolution, Sec. 4 (a).

26. World Bank Articles of Agreement: Non Politicization, Art. IV (10).

IN THE

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No. _____

WALTER G. PIETSCH, et al.

PETITIONERS,

v.

GOVERNMENT OF THE UNITED STATES:
Ronald Reagan, President;
William J. Casey, Director, CIA;
George Bush, President of the
Senate, et al.

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners, Walter G. Pietsch, et al., demand that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered on March 10, 1986.

OPINIONS BELOW

The Court of Appeals entered its judgment on March 10, 1986, affirming, without opinion, the determination of the District Court. See Appendix A.

Judge Eugene H. Nickerson of the United States District Court for the Eastern District of New York issued a Memorandum and Order dated November 5, 1985 dismissing plaintiffs' action and denying plaintiffs' motions for class certification and summary judgment. Judgment was filed on November 13, 1985 to that effect. See Appendix B.

JURISDICTION

The United States Court of Appeals entered judgment affirming dismissal of petitioners' action and denying class certification and summary judgment on March 10, 1986. Jurisdiction of this Court is conferred, as a matter of judicial discretion, by Rule 17(c) of the Rules of the Supreme Court, which states in part: "When a . . . federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court. . ." this may be reason for consideration.

Jurisdiction is mandatorily conferred on this Court by the U.S. Constitution, specifically:

Article III, Section 2:

> The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority. . . .

Article VI:

> This Constitution, the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land, and the judges in every state shall be bound thereby, . . .

Petitioners assert that jurisdiction is also mandatory in the instant case because the issue involved is the right of the Executive branch of the United States government to engage in the massive destruction of human life in Nicaragua in violation of our Constitution and numerous other laws. Such a serious charge cannot be dismissed by the courts for farcical procedural reasons. A hearing on the merits is mandatory; otherwise, there is no rule of law.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article I, Section 8:

> The Congress shall have power . . . to declare war (and) . . . to regulate commerce with foreign nations.

United States Constitution, Article II, Section 2:

> The President . . . shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; . . .

United States Constitution, Article II, Section 3:

> He (the President) shall take care that the laws be faithfully executed, . . .

STATEMENT OF THE CASE

On June 3, 1985, Walter G. Pietsch, appearing pro se, and approximately two hundred co-plaintiffs filed a class-action lawsuit against the United States government, demanding that all acts of war against the government and the people of Nicaragua be halted immediately, that reparations be paid to the people of Nicaragua, and that the other forms of relief described in Judge Nickerson's Memorandum and Order of November 5, 1985, be granted, including Summary Judgment, as the facts are not in dispute.

The facts are as follows, in part: Shortly after taking office in 1981, the Reagan Administration instructed

the CIA to recruit, organize, train, supply, arm and finance a group of Nicaraguan exiles, known as the "contras." It has been reliably reported that 46 of 48 of these contra leaders are former national guardsmen who used cruel repression to maintain the former Somoza dictatorship in power in Nicaragua for more than forty years.

After moving the contras to base camps in Honduras near the Nicaraguan border, the CIA then provided the contras with a manual on assassination developed by the CIA (see: Tayacan, Psychological Operations in Guerrilla Warfare, Washington, D.C.: Congressional Research Service, The Library of Congress, October 15, 1984). The contras applied the teachings of the manual and kidnapped, raped, tortured and murdered thousands of civilian men, women and children in Nicaragua (see particularly: Center for Constitutional Rights, Testimony Before The House Permanent Select Committee on Intelligence On The CIA Manual, New York, N.Y.: December 4, 1984), and still continue to do so to this day!

Not to be outdone in acts of terrorism, the Reagan Administration assisted the contras in their

stated determination to overthrow the government of Nicaragua, a country with which we are not at war and a country which has never threatened us in any way, with the following specific, overt acts of war: mining of Nicaragua's harbors, bombing of its oil storage facilities, strafing of military positions with helicopter gunships; a massive attempt at economic strangulation by cutting off all credits, opposing all forms of international assistance, and by placing an economic embargo on all trade with Nicaragua; and an ongoing, intensive campaign of disinformation and lies about Nicaragua to instill hatred in the American people, preparatory to projected expansion of overt acts of war against that country. The lies include: Nicaragua is a brutal Marxist dictatorship that does not permit religious freedom, desecrates Jewish synagogues, is a center for drug trafficking to the United States, and exports revolution throughout the Western Hemisphere, even training guerrilla movements in Brazil. The truth is: Nicaragua's present government was more freely elected than many we support in 1984, with seven different parties participating; it has

eliminated the death penalty; it encompasses many religious persuasions and includes several priests in high government positions; the only desecration of a synagogue occurred before the 1979 Sandinista revolution; the U.S. Drug Enforcement Administration acknowledges that the contras, not the Sandinistas, are involved in drug trafficking; and, while the Sandinistas endorse the struggles of peoples for freedom throughout the Western Hemisphere, the Brazilian government itself denied that there were even any guerrillas operating in Brazil at all!

In response to all of the preceding facts and others cited in petitioners' original brief, which encompassed more than 200 pages of documentation, the defendants said nothing, other than to issue a general denial "so vague and obscure and in bad faith," stated petitioners in their brief, "that a disinterested party reading them could as well interpret them to be a denial of an itemization of charges for motor vehicle repair rather than of charges of acts of war committed by the government in violation of law." The general denial therefore

lacks the good faith specificity required by Rule 8 of the Federal Rules of Civil Procedure, and thus is no denial at all. Petitioners are therefore entitled to Summary Judgment in accordance with Rules 55(e) and 56 of the Federal Rules of Civil Procedure.

The Reagan Administration itself acknowledged it had violated the law by walking out of the proceedings brought against it by the government of Nicaragua before the International Court of Justice on April 9, 1984 (the "walk-out" occurred in January, 1985, when the Reagan Administration's effort to stop the litigation on procedural grounds was defeated by that Court). In so doing, our government illegally abrogated a treaty adopted by the United States Senate in 1946, making us a member of the International Court who has agreed to submit to its compulsory jurisdiction.

Petitioners have enumerated at least 26 statutes violated by the Reagan Administration, including the Constitution of the United States, the United Nations Charter, the Neutrality Act, and the Statute of the International Court of Justice. These are set forth

in the table of authorities preceding the text.

As the defendants have done in several other cases brought against them to stop their illegal war against Nicaragua, in this case as well they submitted various procedural reasons for dismissal of the case, knowing full well that a hearing on the merits would necessarily determine that they are guilty as charged.

Judge Nickerson of the U.S. District Court seized on one of them in order to find an escape hatch from hearing the case on the merits. He chose the government's argument that the 200 petitioners are not entitled to "standing" because they lack "a personal stake in the outcome of the controversy" (see Appendix B). As to the many arguments set forth by petitioners, Judge Nickerson simply stated: "Plaintiff bases his standing both on his status as a citizen and as a taxpayer." He gave no further recitation of petitioners' position, thereby knowingly, willfully and maliciously excluding from the record the many unanswerable arguments set forth by petitioners, arguments so overwhelming that the Court of Appeals chose to issue no opinion rather

than be forced to recite them and then try to refute that which is irrefutable. Among petitioners' irrefutable arguments, taken from their brief, are the following:

> Whenever the issue is war and peace and the waging of an illegal war by the Executive branch, every citizen has standing. War is the taking of human life. Whether each American citizen pulls the trigger, provides the tax dollars for the bullets, gives the orders, or what have you, that citizen, in an illegal war, is being made, involuntarily, an accessory to murder. . . .
>
> When the United States government wages illegal warfare in Nicaragua and then, equally illegally, withdraws from proceedings before the International Court of Justice held to ascertain the extent of that illegality, every citizen and taxpayer, the category to which plaintiffs belong, is entitled to standing as a fundamental right. The right is fundamental because the waging of an illegal war causes irreparable harm to every citizen in any one of several ways, such as: the potential loss of one's own life or that of a loved one, or permanent injury to oneself or one's loved one; the requirement that one kill another human being for no good or sufficient reason, making one a murderer against his will; the requirement that one permit his tax dollars be used to provide the means whereby other citizens kill innocent human beings for no good or sufficient reason; the corresponding dehumanizing effect of such illegal actions on society as a whole, so that its citizens lose respect for the fundamental sacredness of every human life, whether American or of any other nationality or political persuasion. Except in self-defense, war is an ultimate evil, to be avoided by every civilized society and its citizenry at all costs.

Petitioners then noted that various of their number are members of the clergy who have a "manifest overriding commitment to human life." Walter G. Pietsch, the principal plaintiff of record, then recited his own long-standing commitment to human life, evidenced most strongly by his petition campaign, while a student at Hofstra University and manager of the school's radio station, against the death penalty. As a result of his efforts in 1959, 500 signatures were sent to then-Governor Nelson Rockefeller. Pietsch then reminded the Court that in his lawsuit to stop the Vietnam War, he advised the Internal Revenue Service in a letter dated June 8, 1969 (the letter was part of the record), that he considered that war "an unconstitutional, undemocratic war of cold-blooded murder" and he refused to be "an accessory to murder" by being forced to pay taxes to finance that war.

As to the potential loss of life and limb by oneself or one's immediate family, in the Court of Appeals (before the Court could order him to silence after only a four minute presentation, all that they

would permit, Pietsch pointed out to the Court that Rob Coleman, one of the petitioners, was present in the Court; he had been to Nicaragua before, and intended to return again, placing his life in danger by continuation of the illegal war. Similarly, Pietsch pointed out to the Justices Virginia Healy, whose daughter, Sister Peggy Healy, is a regional coordinator for the Maryknoll Sisters in Nicaragua, and is therefore in constant danger of loss of life and limb by continuation of that war. Others who are members of the petitioners who have been to Nicaragua and intend to return include, but are not limited to: Kenneth Lederer and Jan Bramlet.

Beyond establishing his longstanding commitment to human life, Pietsch further established his own additional bases for standing: the previous damage already done to him - physically, emotionally, and personally - by continuation of the illegal War in Vietnam. Though he had no prior criminal record, he was thrown in jail by Judge Rosling in U.S. District Court in Brooklyn on January 9, 1970 because he committed the "crime" of standing quietly at the railing of the outer court, waiting to present his

oral argument, which Judge Rosling refused to hear. Judge Rosling later admitted, in the official transcript of the proceedings, that he didn't like what he saw in an interview conducted by ABC-TV with Pietsch, and he simply couldn't tell the President what to do (?).

In the succeeding month, February , 1970, Pietsch was treated for severe hyperventilation in the Emergency Room in St. John's Hospital in Queens. As the Vietnam War continued, Pietsch suffered several other severe hyperventilation attacks, culminating in confinement in the Intensive Care Unit of a hospital in Morristown, New Jersey in 1972, shortly before he attempted a citizen's arrest on then-President Richard Nixon at the Americana Hotel in New York City in the fall of 1972. Since that war finally ended, the attacks have not recurred, though Pietsch's criminal record remains tarnished (the contempt citation was overturned on appeal), his good name was besmerched - his arrest was reported in the New York Times and Daily News, and the likelihood of further physical and spiritual damage to him is very great, should the illegal war against Nicaragua be permitted to continue by this Court.

Throughout the period, from 1981 to the present time, the Congress of the United States, while at times authorizing limited funds to the contras for the sole purpose of interdicting arms supposedly being sent to rebels in El Salvador, generally has opposed the U.S. providing military aid to the contras for other purposes, and for the past two years or so has opposed lethal aid of any sort to the contras. Notwithstanding, the Reagan Administration through private and public sources has continued to provide military aid to the contras, a totally illegal action which entitles all citizens and taxpayers to standing to stop the misappropriation and misapplication of funds by the Executive branch to finance its illegal war against Nicaragua.

Additionally, petitioners assert their right to standing to overturn a terrible precedent set by Judge Nickerson when he stated in his November 5, 1985 Order and Memorandum: "Congress' war powers, however, do not limit its appropriation power." This is nonsense! Congress manifestly cannot appropriate for a purpose it has not authorized, especially the waging of war

which necessarily involved the massive destruction of human life. If there were no such limitation, then Congress, hypothetically, could appropriate funds to assassinate the President, assuming there is no limitation on its appropriation power! For this absurd reasoning alone, affirmed by the Court of Appeals, this Court must grant this writ of certiorari.

REASONS FOR GRANTING THE WRIT

Petitioners have shown, beyond refutation, their considerable bases for standing in this litigation, the only argument accepted by the lower courts for dismissing this action. The facts presented heretofore, and fully documented in the complete record submitted to this Court, establish the guilt of the Reagan Administration in waging its illegal war against Nicaragua beyond all doubt. Thus, since there is no dispute as to the facts regarding the Executive branch's illegal actions, petitioners' motion for Summary Judgment should be granted, its request for class certification approved, and all of the relief requested should be granted, commencing with issuance of a writ of certiorari.

This Court is so moved.

May 27, 1986
Date

Walter G. Pietsch
Walter G. Pietsch, Pro Se

100 South Ocean Avenue, Apt. 4D
Freeport, New York 11520
(516) 868-9523

WF/1k1 UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of March, one thousand nine hundred and eighty six.

Present:

HONORABLE WILFRED FEINBERG, Chief Judge

HONORABLE WILLIAM H. TIMBERS,

HONORABLE JON O. NEWMAN, Circuit Judges.

----------X

WALTER G. PIETSCH and CITIZENS OF THE UNITED STATES, Plaintiffs,

WALTER G. PIETSCH, Plaintiff-Appellant,

-against-

GOVERNMENT OF THE UNITED STATES, et al.,

Defendants-Appellees

----------X

APPENDIX A-1

(Date Stamped) UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

FILED MARCH 10, 1986

ELAINE B. GOLDSMITH, CLERK

85-6344

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED substantially for the reasons stated by Judge Nickerson in his memorandum decision dated November 5, 1985.

(Signature)
WILFRED FEINBERG, Chief Judge

(Signature)
WILLIAM H. TIMBERS,

(Signature)
JON O. NEWMAN, Circuit Judges

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported cited, or otherwise used in unrelated cases before this court or any other court.

APPENDIX A-3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

WALTER G. PIETSCH, et al., Citizens of the United States,

Plaintiffs,

-against-

GOVERNMENT OF THE UNITED STATES: RONALD REAGAN, PRESIDENT; WILLIAM J. CASEY, DIRECTOR, CIA; GEORGE BUSH, PRESIDENT OF THE SENATE, et al.,

Defendants.
----------X

85 C 2029

MEMORANDUM AND ORDER

WALTER G. PIETSCH
Freeport, New York
plaintiff pro se

RAYMOND J. DEARIE, United States Attorney
(Deborah B. Zwany, Assistant United States Attorney, of counsel)
Brooklyn, New York
for defendants

NICKERSON, District Judge

Plaintiff, acting pro se, brings this action to "(bar) further acts of military, political and economic warfare against the government, territory and people of Nicaragua." Specifically, plaintiff asks the court to order the government to submit

to the jurisdiction of the International Court of Justice, to enjoin Congress and the President from providing funds to aid the "contras," to order the President to remove troops engaged in "training exercises," to order the President to lift the embargo imposed on May 1, 1985, to relieve from criminal liability all draft resisters and those who have aided Central American refugees, and to reimburse all citizens for that portion of their taxes which funded illegal acts in Nicaragua. Plaintiff moves for class certification and for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and defendants move to dismiss the complaint pursuant to Rule 12 of the Federal Rules.

The government argues that plaintiff lacks standing to bring this action. Plaintiff bases his standing both on his status as a citizen and as a taxpayer.

To establish standing plaintiff must assert "a personal stake in the outcome of the controversy" and "not merely a claim of the right possessed by every citizen to require that government be

administered according to law." Baker v. Carr, 369 U.S. 186, 204, 208 (1962). Plaintiff's interest must be more specific and the injury suffered more concrete that that of a citizen-at-large. Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 216-227 (1974); Pietsch v. President of the United States, 434 F.2d 861, 863 (2d Cir.), cert. denied, 403 U.S. 920 (1971).

Plaintiff's status as a taxpayer also does not confer standing in this case. Taxpayers only have standing in limited circumstances. Flast v. Cohen, 392 U.S. 83 (1968). First a taxpayer can only challenge the exercise of congressional power under the taxing and spending clause of Article I, S8. All of plaintiff's claims, except that challenging funds appropriated to aid the "contras," do not meet this test. Second a taxpayer must show that expenditures are unconstitutional because they are limited by a specific constitutional provision. Id. at 102-103.

Congress' war powers, however, do not limit its appropriation power. Pietsch, 434 F.2d at 863.

Defendants' motion to dismiss is granted. Plaintiff's motion for class certification and for summary judgment are denied. So ordered.

Dated: Brooklyn, New York
November 5, 1985

(Signature)
Eugene H. Nickerson, U.S.D.J.

APPENDIX B-4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

WALTER G. PIETSCH, et al., Citizens of the United States,

Plaintiffs,

-against-

GOVERNMENT OF THE UNITED STATES: RONALD REAGAN, PRESIDENT; WILLIAM J. CASEY, DIRECTOR, CIA; GEORGE BUSH, PRESIDENT OF THE SENATE, et al.,

Defendants,

----------x

JUDGMENT
CV 85 2029
(EHN)

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U.S. DISTRICT
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TIME A.M.___
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GB (Initials)

A memorandum and order of Honorable Eugene H. Nickerson, United States District Judge, having been filed on November 8, 1985, granting defendants' motion to dismiss and denying plaintiff's motions for summary judgment and class certification, it is

ORDERED and ADJUDGED that defendants' motion to dismiss is granted and plaintiff's motions for summary judgment and class certification are denied.

(Signature)
ROBERT C. HEINEMANN
Clerk of Court

Dated: Brooklyn, New York
November 12, 1985